

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

**KARL BUZALSKY,**  
*Appellant*

v.

**TOWN OF HANOVER,**  
*Respondent*

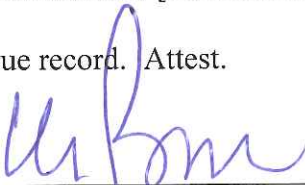
**Case No.: G2-07-413**

**DECISION**

After careful review and consideration, the Civil Service Commission voted at an executive session on March 4, 2010 to acknowledge receipt of the report of the Administrative Law Magistrate dated January 4, 2010. By a 3 -1 vote, the Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal under Docket No. G2-07-413 is hereby *dismissed*.

By a 3 -1 vote of the Civil Service Commission (Bowman, Chairman; Stein and Taylor, Commissioners [Henderson – No; Marquis - Absent]) on March 4, 2010.

A true record. Attest.



Christopher C. Bowman  
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Joseph Keegan, Esq. (for Appellant)  
Daniel C. Brown, Esq. (for Appointing Authority)  
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)  
John Marra, Esq. (HRD)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4<sup>TH</sup> FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE  
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TEL: 617-727-7060  
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January 14, 2010

Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

**Re: *Karl Buzalsky v. Town of Hanover***  
***DALA Docket No. CS-08-302***

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,

*Joan Freiman Fink*

Joan Freiman Fink, Esq.  
Administrative Magistrate

Enclosure

cc: Joseph Keegan, Esquire  
Daniel C. Brown, Esquire

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COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Karl Buzalsky  
Appellant,

v.

DALA Docket No. CS-08-302

Town of Hanover,  
Appointing Authority.

Appearance for Appellant:

Joseph Keegan  
Keegan and Flanagan LLP  
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Quincy, MA 02169

Appearance for Appointing Authority:

Daniel C. Brown, Esq.  
Collins, Loughran, Peloquin PC  
320 Norwood Park South  
Norwood, MA 02062

Administrative Magistrate:

Shelly Taylor

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CIVIL SERVICE COMMISSION

RECOMMENDED DECISION

The appellant, Hanover Police Officer Karl Buzalsky, appeals the decision of the Appointing Authority, the Town of Hanover, bypassing him for promotion to the position of Sergeant with the Hanover Police Department. After proceedings before the Civil Service Commission ("Commission"), this matter was scheduled for hearing on May 28, 2008 before the Division of Administrative Law Appeals. I held a hearing on that date. Twenty-seven exhibits were marked and admitted. Three witnesses testified at the hearing. Both parties submitted post-hearing memoranda. There are two tapes of the hearing.

## A. FINDINGS OF FACT

1. The Hanover Board of Selectmen is the appointing authority for the Town of Hanover Police Department.
2. In 2007, the Town sought a certified list of candidates seeking to promote a patrol officer to the position of sergeant. Ex. 2. Pallotta testimony.
3. The appellant, Officer Buzalsky, was first on the applicable civil service list. Ex. 3.
4. By letter dated December 12, 2007, the appellant, Officer Buzalsky, was notified that he was not selected for promotion. Ex. 2.
5. A candidate ranked below Buzalsky on the civil service list, Daniel Salvucci, Jr., was selected for promotion to the position at issue. Hayes testimony. Ex. 3.
6. By notice dated December 8, 2007, Officer Buzalsky filed this appeal. Ex. 1.
7. Hanover Police Chief Paul R. Hayes testified at the hearing. He described the selection process, which included review and assessment of the candidates by police officials from outside of the Hanover Police Department, *i.e.* an "Assessment Center Review Board." A panel of police officials interviewed and assessed the top three candidates on the civil service list, and gave Buzalsky and Salvucci comparable overall ratings, higher than the panel's rating of the third candidate. The assessment panel provided a summary of their assessments and interviews to Chief Hayes. Ex. 14. Hayes testimony.
8. The top candidates were then interviewed by the Hanover Board of Selectman. Hayes testimony. Pallotta testimony. Buzalsky testimony.
9. The Board voted unanimously to select Officer Salvucci for the promotion. Ex. 2.
10. In a November 20, 2007 summary of the Board's selection provided to the Human Resources Division Civil Service Unit, the Board noted that Salvucci had extensive experience, with

over 22 years of service, was well regarded by the department and had a master's degree in Criminal Justice, among other factors in the Board's decision. Ex. 2.

11. The summary noted that Officer Buzalsky also presented well and was articulate and confident and had a high percentage of arrests and citations. Ex. 2.

12. The summary noted that Buzalsky had misrepresented himself as having held a position as Director of Security with a prior employer, which position he did not hold. Ex. 2.

13. The summary also noted that "disciplinary files for each candidate were reviewed. Ex. 2.

14. The Board noted the irony of that Officer Buzalsky had issued a significant number of motor vehicle sticker violations tickets while he, himself, had an expired sticker. Ex. 2

15. Buzalsky has issued citations to members of the public for operating without a valid inspection sticker. Buzalsky testimony. Ex. 8. Ex. 9.

16. In August, 2006, by Lt. Walter Sweeney of the Hanover Police Department instructed Officer Buzalsky to have his truck inspected. Lt. Sweeney's summary memo of his discussion with Officer Buzalsky, dated August 9, 2006, states:

On this date at approximately 1200 hours, I advised Off. Buzalsky that he was to have his truck inspected due to the fact that the sticker expired in 2004. He was further advised that if he was seen operating his MV without a current inspection sticker in violation of MGL, it would be grounds for suspension or other disciplinary action.

He stated that he understood this.

Ex. 10.

17. A subsequent memo, dated October 27, 2006 to Chief Hayes from Lt. Sweeney states in part:

At approximately 0750 hrs on this date I spoke with Off. Buzalsky regarding the status of the expired (Rejected) inspection sticker on his motor vehicle. Off. Buzalsky indicated to me that he felt that he was within the 60-day grace period

for a failed emission test on his vehicle. I advised him that the 60-day period expired on October 7, 2006. Officer Buzalsky indicated that it was for financial reasons that he had not had the repair performed on his vehicle.

I advised Off. Buzalsky that I had observed him operating his motor vehicle on October 26, 2006... I advised him that I was issuing a written warning for this violation.

I further advised Off. Buzalsky that he was not to bring his uninspected ... vehicle onto the Police Department property... I advised him that if he operates his uninspected motor vehicle on the public way he was committing a civil motor vehicle infraction and would be subject to a violation. I then advised Off. Buzalsky that if he continued to operate this uninspected motor vehicle he would be subject to further disciplinary action....

Off. indicated that he understood all of our conversation, and that he was sorry that the situation had evolved. Off. Buzalsky was given the citation, which was marked "WARNING", in hand by myself.

Ex. 7.

18. Buzalsky has received several commendations, and other recognition for outstanding service as a police officer, most of which were not before the selection committee when it made its decision. Ex. 16, Ex. 17, Ex. 18, Ex. 19, Ex. 20, Ex. 21, Ex. 22, Ex. 23 and Ex.

26. Pallotta testimony. Buzalsky testimony.

19. Most of these were not known to or presented to the selection committee when it made its decision. Hayes testimony. Pallotta testimony.

20. Buzalsky presented one, but not all, of his commendations, in hand to the interview panel. Buzalsky testimony.

21. Chief Hayes recommended the promotion of Officer Salvucci to the Board of Selectmen. He recommended Officer Salvucci over Officer Buzalsky because he felt Salvucci had superior training, experience and education; Salvucci had more years on the force than Buzalsky, Salvucci's command and leadership training and experience were better; and unlike

Buzalsky, Salvucci had a master's degree and no history of disciplinary action. Hayes testimony.

22. In addition to differences in training and experience, Hayes considered the circumstances regarding Buzalsky's vehicle inspection violation rendered him less suitable than Salvucci for promotion. In Hayes' view Buzalsky's failure to correct the invalid inspection sticker for two years, despite having been warned to correct the problem and that he could face discipline if he did not rectify the situation, was a problem. Hayes felt this was an issue of character. Hayes testimony.

23. Hayes also felt that Salvucci's seniority to Buzalsky in years on the job was another important factor in the selection. Hayes testimony.

24. Officer Salvucci has 21 years with the Police Department. Officer Buzalsky has 11 years. Hayes testimony. Buzalsky testimony.

25. When reviewing candidates, the Chief and the Board believed, in error that Buzalsky had only an associate's degree. Hayes testimony. Pallotta testimony.

26. In fact, at the relevant time, Buzalsky held a bachelor's degree. Buzalsky testimony.

27. Hanover Selectman Daniel Pallotta also testified at the hearing. He participated in the Board interviews and review of the candidates. Pallotta testimony.

28. Selectman Pallotta felt Salvucci was a superior candidate because he had more command experience and appeared more in command during his interview, among other things. Pallotta testimony.

29. The circumstances surrounding Officer Buzalsky's inspection violation also were a factor in Selectman Pallotta's vote. He had a problem with Buzalsky having left the motor

vehicle inspection matter unresolved for so long, while he was writing up other people for the same offense. Pallotta testimony.

30. Officer Buzalsky also testified at the hearing. He testified to his many qualifications, and to his belief that these render him equal to or superior to Salvucci. Buzalsky testimony.

31. The Board of Selectmen voted unanimously to select Officer Salvucci for promotion. Ex. 2. Pallotta testimony. Hayes testimony.

32. Officer Buzalsky indicated that he did not know prior to his appeal the reason he was not promoted. Buzalsky testimony.

#### B. CONCLUSIONS OF LAW

“The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion.” *Cambridge v. Civil Serv. Comm’n*, 43 Mass.App.Ct. 300, 304 (1997) and cases cited. The Commission is charged with ensuring that the system operates on” basic merit principles, *i.e.* “assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens....” *Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259-60 (citing G.L. c. 31, § 1).

In a bypass case, the Commission must determine “whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving by a preponderance of the evidence that there was reasonable justification for deviating from the civil service list ranking.

*Cambridge v. Civil Serv. Comm'n, supra* at 303 (citation omitted). Reasonable justification means "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law." *Selectmen of Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482 (1928).

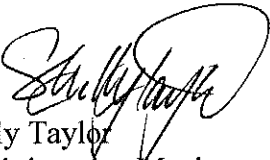
Under these standards, the Appointing Authority has met its burden. The witnesses for the Town testified credibly to that their recommendation was based upon a genuine belief that Salvucci was the better choice for the sergeant's position. The basis for this determination, including the candidates' years and quality of command experience and disciplinary history, are relevant and appropriate considerations in this case, and are well documented in the record of the selection process. I also credit the testimony of Chief Hayes and Selectman Pallotta that one factor in Officer Buzalsky's bypass was the protracted failure to obtain a valid inspection sticker for the vehicle he was using; this, despite the fact that he was given the opportunity to do so and directed to do so, upon peril of disciplinary action. As the record shows, this was a legitimate consideration, given that Buzalsky's duties included issuing citations for an infraction which he committed on one or more occasions, and also required that he adhere to the direction of his superiors.

Officer Buzalsky has not shown that these stated reasons or were untrue, applied unequally to the successful candidates, were incapable of substantiation, or were a pretext for other, impermissible reasons. *MacPhail v. Montague Police Department*, 11 MCSR 308 (1998). Although the evidence also shows that Buzalsky had many of the qualities that the Town sought in filling the Sergeant position, this is not sufficient to impeach the selection of Officer Salvucci, for reasons noted. Civil Service law traditionally affords management a considerable degree of latitude in making selection decisions. "The appointing authority...may select, in the exercise of

broad discretion, among persons eligible...or may decline to make an appointment." *Goldblatt v. Corporate Counsel of Boston*, 360 Mass. 660 (1971) (citation omitted). Nevertheless, candidates have certain expectations that are substantially diminished by the ability of the appointing authority under state law to consider subjective factors in addition to the written examination score. *Burns v. Sullivan*, 619 F.2d 99 (1st Cir. 1980).

For the foregoing reasons, I conclude that the Appointing Authority has met its burden and recommend that the Commission sustain the promotional decision in this case.

SO ORDERED.

  
Shelly Taylor  
Administrative Magistrate

DATED:

11/14/10

**MINORITY OPINION OF COMMISSIONER DANIEL M. HENDERSON**

This proposed decision from DALA contains too many omissions and oversights. The scores on the competitive civil service examination is the primary determinant of relative and/or comparative qualification of the competing candidates. The exam scores or score differential of the competing candidates including the selected candidate and the bypassed Appellant are not contained in this DALA proposed decision. "A civil service test score is the primary tool in determining relative ability, knowledge and skills and in taking a personnel action grounded in basic merit principles." Sabourin v. Town of Natick, Docket No. G-01-1517 (2005).

However, I do believe that the objective factor of the wide disparity of seniority, or total years of service, to the benefit of the selected candidate, 21 years to the Appellant's 11 years is a substantial factor to be considered. I believe that this factor alone, if cited by the appointing authority as a substantial reason for bypass, could counter balance a small test score differential, all other factors being equal. The Appellant, in his interview with the Town's BOS, affirmed the importance of seniority and experience, despite this admission not advancing his own candidacy. However, from this incomplete record, it appears as if other impermissible factors or information may have invaded the interview-assessment, evaluation-appointment process. It also appears that the selected candidate may have benefited by a lack of scrutiny of his past civil driving offenses and/or driver's record, and his issuance of similar civil citations (inspection sticker) for which the Appellant suffered. This issue would pre-suppose an investigation and correlation of the selected candidate's record of past civil violations, if any, and his issuance of similar citations, if any, to citizen-drivers. It also appears that

The Police Chief who made the recommendation and the BOS, who selected the bypassing candidate, were operating under misconceptions regarding the Appellant's higher qualification at the time of selection. Just two of those misconceptions were; the Appellant having an associate's degree when he possessed a BA degree and the fact that the Appellant had a certain number of commendation letters, The BOS and the Chief had been unaware of. This selection process appears to have been tainted.

There is no doubt that the Appellant was qualified for this promotion and stood at the top of the eligibility list. The Appellant also performed well in the interview-assessment process, scoring the highest possible score of "5-excellent", which was tied with the selected candidate. The interview-assessment process was not audio or video recorded, but the results were summarized in a letter by the Board of Selectmen, dated November 20, 2007. The detail of this interview-assessment process and its scoring is not sufficiently described, but **it was admitted by the Police Chief that it was the first time that any such process had been employed by the Department in a promotional appointment. It was also the first time in known Departmental history that any candidate had been bypassed for promotional appointment.** The use of an abstruse interview-evaluation process for promotions in a small or medium size department is of questionable value. The Police Chief and the command staff here should have been very familiar with the qualifications of each of the competing candidates. It's their job to know that information. There are annual performance reviews and other records that document their performance in the normal course with due notice to the employee and his timely opportunity to contest and review. This type of system is transparent, routinely monitored and traditionally relied upon by both the employees and management. All of the

candidates here are long-term employees and there should not have been anything but a complete surprise learned from an interview. The abstruse interview-evaluation process employed here allows for the injection of impermissible factors in contradiction to basic merit principles, which are at the heart of Chapter 31. See Barry v. Town of Lexington, G2-07-231, decision, appeal allowed, dated October 8, 2008.

Why was the traditional promotional process changed for this appointment? It is not clear whether the competing candidates were given sufficient prior written notice of all of the factors and criteria that would be measured and weighed in this interview-assessment, promotional appointment.

The BOS's November 20, 2007 bypass/selection letter spends only (1/3) one-third as much space describing the Appellant's qualities and qualifications for the sergeant's position as it did for the selected candidate. The letter also contains criticism of the Appellant over several alleged circumstances, without attributing or verifying the source of such information. There is not even slight criticism of the selected candidate, contained in that letter. That letter is almost embarrassing to read, due to the over the top, if not unrealistic adulation of the selected candidate contained in it. The selected candidate is the source of virtually all of the subjective superlatives and self-serving self descriptions. This self-serving, self-description is then adopted by the BOS as their own impartial assessment of the selected candidate. This letter contains overt tones of favoritism towards the selected candidate and bias against the Appellant. The Appellant's 2006 civil violation for inspection sticker, (Rejection sticker) and his belated remedy to it became an issue in this bypass. However, how this civil violation and the Appellant's driver's record came to the attention of the Police Chief and the BOS at the time of this

promotional bypass remains unknown. Were the other competing candidates equally subjected to scrutiny of their past civil violations and driver's records? Were the other candidates subjected to an inquiry and scrutiny of their pre-departmental employment, as the Appellant appears to have been, (Wear Guard)? Remember the Appellant was an 11 year member of the Department, at the time. Was the Appellant placed under a microscope, while the other candidates merely viewed through a telescope? Police Chief Hayes and the Selectman Pallotta admitted in their testimony that they each had numerous civil violations on their own driver's record. Selectman Pallotta admitted to having received at least (24) twenty-four citations. There is also the mysterious interjection of the issue of the Appellant supposedly claiming in his BOS interview that he previously held the position of Director of Security for Wear Guard Co., without actually holding that title. Included in the BOS's November 20, 2007 letter selecting the bypassing candidate, is a statement of resentment by the "actual Director of Security" for this alleged misrepresentation by the Appellant. The identity of the source, verification of, mode and date of communication, of this supposed misrepresentation is left entirely mysterious. Selectman Pallotta testified that he did not recall receiving a recommendation from the Police Chief on this selection. However, the Police Chief testified that he did give his recommendation for the selected candidate to the BOS. All of this above described information did substantially affect the BOS's selection process. This proposed decision is at best incomplete. There are too many undetermined relevant factors.

"The fundamental purpose of the civil service system as outlined in the civil service law, G.L. Chapter 31 is to guard against political considerations, favoritism and

bias in governmental hiring and promotion.” *Cambridge v Civil Ser. Comm’n* 43 Mass. App. Ct. 300, 304 (1997). This purpose is effectuated by the implementation of basic merit principles in the hiring and promotion process. G.L. c 31 § 1 defines as follows: “Basic merit principles”, shall mean (a) recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment; (b) providing of equitable and adequate compensation for all employees; (c) providing of training and development for employees, as needed, to assure the advancement and high quality performance of such employees; (d) retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected; (e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and; (f) assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.

Appointing Authorities are charged with the responsibility of exercising sound discretion and good faith when choosing individuals from a certified list of eligible candidates on a civil service list. “On a further issue we may now usefully state our views. The appointing authority, in circumstances such as those before us, may not be required to appoint any person to a vacant post. He may select, in the exercise of a sound discretion, among persons eligible for promotion or may decline to make any appointment.” See the line of cases cited in Goldblatt vs. Corporation Counsel of Boston,

360 Mass 660, 666, (1971): Commissioner of the Metropolitan Dist. Commn. v. Director of Civil Serv. 348 Mass. 184, 187-193 (1964). See also Corliss v. Civil Serv. Commrs. 242 Mass. 61, 65; (1922) Seskevich v. City Clerk of Worcester, 353 Mass. 354, 356 (1967); Starr v. Board of Health of Clinton, 356 Mass. 426, 430-431 (1969). Cf. Younie v. Director of Div. of Unemployment Compensation, 306 Mass. 567, 571-572 (1940). In addition to sound discretion, the appointing, public officer is expected to employ honesty and good faith in the selection process. A judicial judgment should "not be substituted for that of . . . [a] public officer" who acts in good faith in the performance of a duty. See M. Doyle & Co. Inc. v. Commissioner of Pub. Works of Boston, 328 Mass. 269, 271-272." Goldblatt vs. Corporation Counsel of Boston, 360 Mass 660, 666, (1971).

In a bypass appeal, the question is "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the Appointing Authority." City of Cambridge v. Civil Service Commission. 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification requires that the Appointing Authority's actions be were based on adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law." Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). All applicants must be adequately and fairly considered.

"An Appointing Authority must proffer objectively legitimate reasons for the bypass, rather than rationalizations for the selection of one candidate over the other." See Tuohey v. MBTA, Case No.: G2-04-394 (2006). The interview-evaluation process did not identify a personality or character trait that might reasonably interfere with the

Appellant's ability to perform the duties and responsibilities of the sergeant's position.

Compare Radford v. Andover Police Department, 17 MCSR 93, (2004).

For all of the above stated reasons, I disagree with the Commission's majority on this DALA proposed decision.



Daniel M. Henderson,  
Commissioner  
Civil Service Commission  
March 4, 2010